IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITIONS NO. 347 & 349 OF 1997

WRIT PETITION NO. 347 OF 1997

1. M/s. Asiatic Estate Developments, a partnership firm represented by its Managing Partner, Savio A.J. da Rocha Lobo, with its office at lst Floor, Camila Building, Opp. Old Bus Stand, Panaji, Goa,

2. Asiatic Estate Developments Pvt. Ltd., a Company incorporated under its principal office at lst Floor, Camila Bldg., Opp. Old Bus Stand, Panaji, Goa,

3. Asiatic Holiday Resorts Pvt. Ltd., a Company incorporated under the Indian Companies Act, 1956, with its principal office at lst Floor, Camila Bldg., Opp. Old Bus Stand, Panaji, Goa, and

4. Mr. Savio A. J. Da Rocha Lobo, major of age, married, r/o lst Floor, Camila Bldg., Opp. Old Bus Stand, Panaji, Goa. ... Petitioners.

Versus

1. State of Goa, through Chief Secretary, Secretariat, Panaji, Goa,

2. The Junior Engineer, Section Officer, Calangute, Bardez,Goa, and

3. The Sarpanch, Village Panahcyat Calangute, Calangute, Bardez, Goa. ... Respondents.

Mr. S. K. Kakodkar, Senior Advocate with Mr. J. J. De Souza, advocates for the petitioners.

Mr. A. N. S. Nadkarni, Advocate General with Mr. H. R. Bharne, Government Advocate for respondents no.1 & 2.

Mr. A. N. S. Nadkarni, Advocate General with Mr. P. A. Kamat, advocate for respondent no.3.

WRIT PETITION NO. 349 OF 1997

1. The Goa Foundation,
represented by its
Secretary, Dr. Claude
Alvares, with registered
office at Rm.7, above
Mapusa Clinic,
Mapusa, 403 507, Goa, and

2. Ms. Annie Coelho,
Cobrovaddo, Calangute,
Goa. ... Petitioners.

Versus

1. Panchayat of Calangute
through its Sarpanch,
Calangute, Bardez, Goa,

2. Health Officer, Primary
Health Centre, Candolim,
Bardez, Goa,

3. The Chief Town Planner,
Town and Country Planning
Department, Old Goa
Medical College, Complex,
Panaji, Goa,

4. The Goa State Pollution
Control Board, through its
Member-Secretary, Pato,
Panaji, Goa,

5. Director of Tourism,
Department of Tourism,
Patto, Panaji, Goa,

6. State of Goa, through
Chief Secretary,
Secretariat, Panaji, Goa,

7. M/s Asiatic Estate

Developments, a partnership
firm represented by its
Managing Partner, Savio A.J.
da Rocha Lobo, with its
office at lst Floor,
Camila Bldg., Opp. Old
Bus Stand, Panaji, Goa,

8. Asiatic Estate
Developments Pvt. Ltd.,
a company incorporated
under the Indian Companies
Act, 1956, with its
principal offices at
Camila Bldg., 1st Floor,
Opp. Old Bus Stand,
Panaji, Goa,

9. Asiatic Holiday Resorts
Pvt. Ltd., a company
incorporated under the
Indian Companies Act, 1956,
with its principal office
at lst Floor, Camila Bldg.,
near Old Bus Stand,
Panaji, Goa,

10. The Technical Officer,
Asst. Engineer, Sub-
Division II, Works
Division II, Public Works
Dept., Govt. of Goa,
Mapusa,

11. Hypolito Mergulhao,
Calangute, Bardez, Goa. ... Respondents.

Mrs. Norma Alvares, advocate for the petitioners.

Mr. A. N. S. Nadkarni, Advocate General with Mr. P. A. Kamat, advocate for respondent no.1.

Mr. A. N. S. Nadkarni, Advocate General with Mr. H. R. Bharne, Government Advocate for respondents no.2, 3, 5, 6 & 10.

Mr. N. P. Gaunekar, advocate for respondent no.4.

Mr. S. K. Kakdokar,Senior Advocate with Mr. J. J. De Souza, advocate for respondents no. 7 to 9.

Mr. A. D. Bhobe, advovcate for respondent no.11.

CORAM: S. J. VAZIFDAR &
P. V. HARDAS,JJ.

DATE: 25th March, 2003.

ORAL JUDGMENT (Per Vazifdar, J.)

Both the petitions can be conveniently disposed of by a common judgment.

In Writ Petition No. 347 of 1997, the petitioners have challenged the action of the respondents in threatening to disconnect the electricity supply. This was purported to be done on the basis of a complaint received from the Village Panchayat regarding the construction not being in compliance with the law.

Writ Petition no. 349 of 1997 is a Public Interest Litigation where the petitioners challenge certain permissions granted by the respondent nos. 7 to 9, some of whom are petitioners in Writ Petition no. 347 of 1997. The petitioners in this petition also sought a demolition of a part of the construction on the ground that it was illegal.

2. The petitioners in Writ Petition no. 347 of 1997 succeeded in obtaining certain ad interim orders. Subsequently, when Writ Petition No.349 of 1997 was filed, an order was passed on 23rd October, 1997, by which the respondents were restrained from granting any occupation certificate to respondent nos. 7 to 9 in respect of the construction, till the illegalities were removed and the

health officer inspected the area and filed a compliance report. A further interim order was passed to the effect that respondent nos. 7 to 9 were restrained from using the premises either for residential or tourism purposes, or as a hotel or as a resort, forthwith.

3. The Village Panchayat by an Order dated 27th January, 1998, issued various directions against respondent nos. 7 to 9 in Writ Petition no. 349 of 1997, calling upon them to take various remedial measures, including removal of certain structures/construction, laying and maintaining the sewage line, demolition of certain out-houses and restraining them from using certain open spaces. A fine of Rs. 10,00,000/- was also imposed. That Order it appears, was challenged before the Director of Panchayats. The appeal was, however, dismissed as being barred by limitation.

4. By an Order dated 13th January, 2000, in Writ Petition No. 349 of 1997 the first respondent, i.e. the Panchayat of Calangute, was directed to file an affidavit of the Sarpanch as to whether the directions contained in the Order dated 27th January, 1998 were complied with or not. All the concerned parties have filed their respective affidavits.

5. The result of the aforesaid discussion is

that the Order dated 27th January, 1998, is still in operation. It has not been challenged. Mr. Kakodkar submitted that in view of the fact that the petitions were pending in this Court the petitioners in Writ Petition no. 349 of 1997 were desirous of satisfying this Court that the conditions stipulated in the Order dated 27th January, 1998, have been complied with. He sought to substantiate this on the basis of various affidavits and documents, including permissions allegedly granted by the concerned authorities. The respondents have disputed this contention.

6. It is not for this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, to decide as to whether the directions contained in the Notice 27th January, 1998, have been complied with or not. In fact, it is impossible for us to do so at least at this stage. In any event, if the petitioners in Writ Petition No. 347 of 1997 have complied with the same, it is for them to satisfy the Village Panchayat of Calangute that they have done so.

7. As far as the petitioners in Writ Petition No. 349 of 1997 are concerned, their grievances have been redressed in view of the Order dated 27th January, 1998. Mrs. Alvares fairly stated that if the directions contained in the Order dated 27th January, 1998, are

complied with, the petitioners' grievances would not survive. Needless to add that in view of the Order dated 27th January, 1998, the orders that have been impugned in Writ Petition no. 347 of 1997 cannot be given effect to.

8. In the circumstances, the above Writ Petitions are disposed of with the following directions:-

(i) The petitioners in Writ Petition no.347 of 1997 are at liberty to make an application before the Village Panchayat to satisfy the Panchayat that they have complied with the directions contained in the Order dated 27th January, 1998. It is clarified that it will be open to the petitioners to satisfy the Village Panchayat of this even on the basis of the steps which the petitioners may, hereafter take. All the rights and contentions of the parties in this regard are kept open;

(ii) The Village Panchayat shall hear the petitioners in Writ Petition No. 347/97 while considering the application, if any, that may be made by the petitioners in Writ Petition No. 347/97;

(iii) The interim orders already granted in Writ Petition No. 349 of 1997 shall continue till the order is passed by the Village Panchayat on an application, if any, of the petitioners in Writ Petition no. 347 of 1997 and for a period of eight weeks after communication thereof to all the concerned parties.

(iv) The Village Panchayat of Calangute shall dispose of any application that the petitioners in Writ Petition no. 347 of 1997 may make, within four weeks of the receipt of such an application by the Village Panchayat.

Rule made accordingly.

S. J. VAZIFDAR, J.

P. V. HARDAS, J.

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